

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to section 227.112 of the Wisconsin Statutes, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) is hereby accepting comments on the proposed guidance document:

WaiverMange

LOCATION OF PROPOSED GUIDANCE

Proposed guidance document may be reviewed by accessing:

https://datcp.wi.gov/Pages/About_Us/GuidanceDocuments.aspx

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance document may be submitted by accessing:

https://datcp.wi.gov/Pages/About_Us/GuidanceDocuments.aspx

DEADLINE FOR SUBMISSION

The comment period will run no fewer than 21 days after the publication of this document in the Administrative Register.

AGENCY PUBLICATION

The attached guidance document contains statements or interpretations of law under the following applicable provisions of federal law or the applicable state statutory or administrative code provisions: Wis. Stat. ch. 95, Wis. Admin. Code, ch. 10.

CERTIFICATION

Pursuant to the authority delegated to me by the Secretary, I have reviewed the attached guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly required or explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

Darlene M. Konkle

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GUIDANCE DOCUMENT

WaiverMange

This guidance document is based on Wis. Stat. ch. 95 and chapter(s) ATCP 10 Wis. Admin. Code. This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed.

62 (DAH)

Order granting a waiver from the requirement that animal mange be reported to the department within 10 days.

<i>Darlene M. Konkle</i>	6/5/2020
... Division of Animal Health	DATE

Contributors:

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

IN THE MATTER OF A WAIVER OF)	AH Docket No. 20-O-002
ANIMAL HEALTH RULES)	
Section ATCP 10.03 (2) and)	ORDER GRANTING A WAIVER FROM
ATCP 10 Appendix B,)	THE REQUIREMENT THAT ANIMAL
Wisconsin Administrative Code, for)	MANGE BE REPORTED TO THE
Animal Mange)	DEPARTMENT WITHIN 10 DAYS.
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INTRODUCTION

Under s. ATCP 10.93, Wis. Admin. Code, the State of Wisconsin Department of Agriculture, Trade and Consumer Protection (department) may waive provisions of ch. ATCP 10, Wis. Admin. Code (Animal Health Program) if the department finds that the waiver is reasonable and necessary, is consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law. The state veterinarian must issue the waiver in writing.

Pursuant to s. ATCP 10.93, Wis. Admin. Code, the department hereby makes the following findings and conclusions and issues the following order waiving the requirement that animal mange be reported to the department within 10 days.

FINDINGS OF FACT

(1) The department is responsible for administering Wisconsin’s animal health program under ch. 95, Wis. Stats. The program is designed to protect the health of animals in this state, and to prevent, control and eradicate communicable diseases among animals. The department has broad authority to adopt rules interpreting statutes under its jurisdiction (see s. 93.07 (1), Wis. Stats.).

(2) Under s. ATCP 10.93, Wis. Admin. Code, the department may waive any provision of ch. ATCP 10, Wis. Admin. Code, if the department finds that the waiver is reasonable and necessary, is consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law. The state veterinarian must issue the waiver in writing.

(3) Section ATCP 10.03 (2), Wis. Admin. Code, requires that a person who diagnoses or obtains credible diagnostic evidence of any disease identified in ch. ATCP 10 Appendix B, in an animal in this state, shall report that diagnosis or evidence to the department within 10 days after making the diagnosis or obtaining the evidence.

(4) Section ATCP 10 Appendix B, Wis. Admin. Code, lists Mange under Multiple Species Diseases.

(5) Mange is a disease caused by skin mites.

(6) Almost all species of mammals are susceptible to a type of mange. Just a few examples include horses, sheep, swine, poultry, dogs, and cats.

(7) Mange is common in many species.

(8) The department does not take regulatory action in the case of animal mange alone.

(9) The common frequency of animal mange makes the reporting requirement burdensome.

(10) The requirement to report mange within 10 days is a rule provision [see s. ATCP 10.03 (2) and Appendix B, Wis. Admin. Code] and not a statutory requirement.

(11) A waiver to the requirement to report animal mange under s. ATCP 10.03 (2) and ATCP 10 Appendix B, Wis. Admin. Code, would be reasonable and necessary, consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, for animal disease control, and would not conflict with state statutes.

(12) The Division of Animal Health could properly grant a waiver of s. ATCP 10.03 (2) and ATCP 10 Appendix B, Wis. Admin. Code, to the requirement that animal mange be reported to the department within 10 days.

CONCLUSIONS OF LAW

(1) This waiver does not affect any other provisions of ch. ATCP 10, Wis. Admin. Code.

(2) This waiver does not conflict with any requirements under ch. 95, Wis. Stats.

(3) Pursuant to s. ATCP 10.93, Wis. Admin. Code, the department may grant a written waiver from a requirement under ch. ATCP 10, Wis. Admin. Code, if the department finds that the waiver is reasonable and necessary, is consistent with objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law.

(4) The department has made the findings required under s. ATCP 10.93, Wis. Admin. Code.

(5) Pursuant to s. ATCP 10.93, Wis. Admin. Code, and Findings of Fact (1) through (12), the department should waive the requirement that animal mange be reported to the department within 10 days under s. ATCP 10.03 (2) and Appendix B, Wis. Admin. Code.

ORDER

NOW, THEREFORE, it is ordered pursuant to s. ATCP 10.93, Wis. Admin. Code, that:

(1) The department grants a waiver from the requirement that animal mange be reported to the department within 10 days under s. ATCP 10.03 (2) and ATCP 10 Appendix B, Wis. Admin. Code.

(2) This waiver will remain in effect until formally rescinded by order of the State Veterinarian.

Dated this __5th__ day of June, 2020

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: ***Darlene M. Konkle***
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